

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DAILY NEWS, LP, CHICAGO TRIBUNE COMPANY, LLC, ORLANDO SENTINEL COMMUNICATIONS COMPANY, LLC, SUN-SENTINEL COMPANY, LLC, SAN JOSE MERCURY-NEWS, LLC, DP MEDIA NETWORK, LLC, ORB PUBLISHING, LLC, and NORTHWEST PUBLICATIONS, LLC,

Plaintiffs,

v.

MICROSOFT CORPORATION, OPENAI, INC., OPENAI LP, OPENAI GP, LLC, OPENAI, LLC, OPENAI OPCO LLC, OPENAI GLOBAL LLC, OAI CORPORATION, LLC, and OPENAI HOLDINGS, LLC,

Defendants.

Case No. 1:24-cv-03285-SHS-OTW

**RULE 5.1 NOTICE OF CONSTITUTIONAL CHALLENGE TO A STATE STATUTE**

Pursuant to Rule 5.1(a) of the Federal Rules of Civil Procedure, Defendant Microsoft Corporation respectfully files this Rule 5.1 Notice of Constitutional Challenge of a State Statute. In Microsoft's Partial Motion to Dismiss Plaintiffs' Complaint, Microsoft seeks dismissal of Plaintiffs' trademark dilution claim under New York's Gen. Bus. Law § 360-1 (Count VIII). Dkt. No. 77 at 23-25; Dkt. No. 105 at 9-10. Microsoft argues that the claim is barred by the Constitution because, under the particular facts of this case, applying state law in the improper manner Plaintiffs request would run afoul of the Dormant Commerce Clause. Dkt. No. 77 at 23-25; Dkt. No. 105 at 9-10.

In compliance with Rule 5.1(a)(2) of the Federal Rules of Civil Procedure, Microsoft served the New York State Attorney General with a copy of this Notice and the Motion questioning Plaintiffs' application of § 360-1 via certified mail. A true and accurate copy of that notice is attached hereto as Exhibit A.

Dated: February 3, 2025

By: /s/ Annette L. Hurst

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*Attorneys for Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2025, the foregoing was served upon the New York State Attorney General by mailing a copy via Certified Mail to the New York State Attorney General at the following address:

Letitia A. James  
New York State Attorney General  
Managing Attorney's Office of the New York State Attorney General  
28 Liberty Street, 16th Floor  
New York, NY 10005

By: /s/ Annette L. Hurst

Annette L. Hurst (admitted *pro hac vice*)